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GOVERNMENT REFORM AND SAVINGS ACT OF 1993

NOVEMBER 15, 1993.—Ordered to be printed

Mr. MONTGOMERY, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 3400 which on October 28, 1993, was referred jointly to the following committees for a period ending not later than November 15, 1993: Agriculture, Armed Services, Banking, Finance and Urban Affairs, Education and Labor, Energy and Commerce, Foreign Affairs, Government Operations, House Administration, the Judiciary, Merchant Marine and Fisheries, Natural Resources, Permanent Select Committee on Intelligence, Post Office and Civil Service, Public Works and Transportation, Science, Space, and Technology, Veterans' Affairs, and Ways and Means]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3400) to provide a more effective, efficient, and responsive government, having considered the same, report favorably thereon, by unanimous voice vote, with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Strike out subtitles A and B of title XII (page 122, line 7 through page 125, line 2) and insert the following:

Subtitle A—Administrative Improvements

SEC. 12001. ELIMINATION OF HOSPITAL AND NURSING HOME BED CAPACITY REQUIREMENTS.

(a) Section 8110(a)(1) of title 38, United States Code, is amended—

(1) by striking “at not more than 125,000 and not less than 100,000”; and

(2) by striking the third and fourth sentences.

(b) Section 8111(a) of such title is amended by striking out "result (1)" and all that follows through "maintained or".

SEC. 12002. ELIMINATION OF REQUIREMENT FOR MINIMUM NUMBER OF PERSONNEL IN THE OFFICE OF INSPECTOR GENERAL.

Subsection (b) of section 312 of title 38, United States Code, is amended to read as follows:

"(b) Whenever the Secretary proposes to reduce the authorized number of full-time equivalent employees assigned to the Office of Inspector General, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report providing notice of the proposed reduction and a detailed explanation for the proposed reduction. No action to carry out the proposed reduction may be taken after the submission of such report until the end of a 45-day period of continuous session of Congress (determined in the same manner as specified in the last sentence of section 510(b) of this title) following the date of the submission of the report."

SEC. 12003. MODIFICATION OF ADMINISTRATIVE REORGANIZATION AUTHORITY.

(a) MODIFICATION OF REQUIREMENT TO REPORT TO CONGRESS.—Section 510 of title 38, United States Code, is amended by striking out "90-day" both places it appears in subsection (b) and inserting in lieu thereof "45-day".

(b) AUTHORITY TO REORGANIZE OFFICES IN EVENT OF EMERGENCY.—Such section is further amended by striking out subsection (d) and inserting the following:

"(d)(1) The limitation in subsection (b) does not apply with respect to an administrative reorganization at a medical facility if the Secretary determines that the reorganization is necessary to respond to an emergency situation at that facility. The Secretary may determine that there is an emergency situation at a medical facility for purposes of this subsection only in a case in which there would be an immediate danger to patients and employees at that facility without the reorganization. In the case of a facility at which officials of the Department are considering whether to implement an administrative reorganization before the event or occurrence which leads to an initial finding that such an emergency exists, the Secretary may not make such a determination.

"(2) Whenever the Secretary determines under paragraph (1) that it is necessary to carry out an administrative reorganization at a medical facility without regard to the limitation in subsection (b), the Secretary shall submit a report on that determination to the Committees on Veterans' Affairs of the Senate and House of Representatives. The report shall provide the same information as is provided in a detailed plan and justification in the case of an administrative reorganization subject to subsection (b). The Secretary shall include in the report an explanation of the alternatives to the proposed administrative reorganiza-

tion that were considered and each factor that was considered in the decision to reject each such alternative.”.

SEC. 12004. ELIMINATION OF REQUIREMENT FOR CERTAIN SERVICES IN THE VETERANS HEALTH ADMINISTRATION.

(a) Section 7305 of title 38, United States Code, is repealed.

(b) The table of sections at the beginning of chapter 73 of such title is amended by striking the item relating to section 7305.

SEC. 12005. MODIFICATION OF PHYSICIAN REQUIREMENT FOR CERTAIN SENIOR VETERANS HEALTH ADMINISTRATION OFFICIALS.

(a) **UNDER SECRETARY.**—Section 305 of title 38, United States Code, is amended—

(1) in subsection (a)(2), by striking out “shall be a doctor of medicine and shall be” and inserting in lieu thereof “shall (except as provided in subsection (d)(1)) be a doctor of medicine. The Under Secretary shall be”;

(2) in subsection (d)—

(A) by adding at the end of paragraph (1) the following: “If at the time such a commission is established both the position of Deputy Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed by the President as Under Secretary for Health may be someone who is not a doctor of medicine. In any case, the Secretary shall develop, and shall furnish to the commission, specific criteria which the commission shall use in evaluating individuals for recommendations under paragraph (3).”;

(B) by redesignating paragraph (4) as paragraph (5);

(C) by inserting after the first sentence of paragraph (3) the following: “In a case in which, pursuant to paragraph (1), the individual to be appointed as Under Secretary does not have to be a doctor of medicine, the commission may make recommendations without regard to the requirement in subsection (a)(2)(A) that the Under Secretary be appointed on the basis of demonstrated ability in the medical profession, but in such a case the commission shall accord a priority to the selection of a doctor of medicine over an individual who is not a doctor of medicine.”; and

(D) by designating the last two sentences of paragraph (3) as paragraph (4).

(b) **DEPUTY AND ASSOCIATE DEPUTY UNDER SECRETARY.**—Section 7306 of such title is amended—

(1) in subsection (a)—

(A) by striking out "of the following:" in the matter preceding paragraph (1) and inserting in lieu thereof "such personnel as may be considered necessary for the purposes of this chapter. In appointing persons to positions in the Office, the Under Secretary shall consider the different types of health care services provided to veterans by the Veterans Health Administration and shall seek to ensure that appointments in the Office are made in such a manner that the Office is staffed so as to provide the Under Secretary with appropriate expertise in those services. The Office shall include the following:";

(B) by inserting "(except as provided in subsection (c))" in paragraphs (1) and (2) after "and who shall";

(C) by striking out each paragraph after paragraph (2);

(2) by striking out subsection (b);

(3) by redesignating subsection (c) as subsection (b) and striking out "In the case of" in the second sentence and all that follows through "such appointments" and inserting in lieu thereof "Such appointments"; and

(4) by inserting after subsection (b), as so redesignated, the following new subsection (c):

"(c)(1) If at the time of the appointment of the Deputy Under Secretary for Health under subsection (a)(1), both the position of Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Deputy Under Secretary for Health may be someone who is not a doctor of medicine.

"(2) If at the time of the appointment of the Associate Deputy Under Secretary for Health under subsection (a)(2), both the position of Under Secretary for Health and the position of Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Associate Deputy Under Secretary for Health may be someone who is not a doctor of medicine."

SEC. 12006. USE OF FUNDS RECOVERED FROM THIRD PARTIES.

(a) **AUTHORIZED USES.**—Section 1729(g) of title 38, United States Code, is amended by adding at the end of paragraph (3) the following new subparagraph:

"(C) Payments for (i) the purchase of needed medical equipment, and (ii) such other purposes as may be specifically authorized by law."

(b) **AVAILABILITY OF FUNDS.**—Such section is further amended by striking out paragraph (4) and inserting the following:

"(4)(A) Not later than December 1 of each year, there shall be set aside within the Fund a reserve to be used for the purposes described in paragraph (3)(C). The amount placed into the reserve each year shall be determined under subparagraph (B). No funds may be obligated under paragraph (3)(C) in excess of the funds in the reserve. The reserve shall remain available for obligation until expended.

"(B)(i) On December 1, 1993, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

"(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1993, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

"(II) \$538,600,000.

"(ii) On December 1, 1994, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

"(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1994, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

"(II) \$590,500,000.

"(iii) On December 1, 1995, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

"(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1995, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

"(II) \$646,000,000.

"(iv) On December 1, 1996, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

"(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1996, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

"(II) \$698,100,000.

"(v) On December 1, 1997, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

"(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1997, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

"(II) \$753,500,000.

"(C) If the amount to be set aside for the reserve for any year, as calculated under subparagraph (B), is less than zero, the amount added to the reserve for that year shall be zero.

"(5) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such bal-

ance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3), and the amount in the reserve described in paragraph (4).

“(6) The Secretary shall prescribe regulations for the allocation of amounts in the reserve under paragraph (4) to the medical centers of the Department for the purposes stated in paragraph (3)(C). Those regulations shall be designed to provide incentives to directors of medical centers to increase the recoveries and collections under this section by requiring that 20 percent of those amounts be made available each year directly to the medical centers at which such recoveries and collections have been at above average levels. The remaining 80 percent of those funds shall be allocated as the Secretary considers appropriate.”.

Subtitle B—Closure of Certain Facilities

SEC. 12101. CLOSURE OF SUPPLY DEPOTS.

(a) **IN GENERAL.**—The Secretary of Veterans Affairs shall close the Department of Veterans Affairs' supply depots specified in subsection (b).

(b) **COVERED DEPOTS.**—Subsection (a) applies to the supply depots of the Department of Veterans Affairs at the following locations:

- (1) Somerville, New Jersey.
- (2) Hines, Illinois.
- (3) Bell, California.

(c) **DEADLINE.**—The Secretary shall complete the actions required by subsection (a) not later than September 30, 1995.

SEC. 12102. WAIVER OF OTHER PROVISIONS.

Sections 510(b) and 8121 of title 38, United States Code, do not apply to the actions required under this subtitle.

Strike out subtitle D (page 126, line 7 through page 139, line and insert the following:

Subtitle D—Veterans' Appeals Improvements

SEC. 12301. BOARD OF VETERANS' APPEALS.

(a) **BOARD MEMBERS AND PERSONNEL.**—Section 7101(a) of title 38, United States Code, is amended to read as follows:

“(a)(1) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter referred to as the ‘Board’). The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary.

"(2) The members of the Board shall be the Chairman, a Vice Chairman, such number of Deputy Vice Chairmen as the Chairman may designate under subsection (b)(4), and such number of other members as may be found necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner."

(b) **ETHICAL AND LEGAL LIMITATIONS ON CHAIRMAN.**—Section 7101(b)(1) of such title is amended by inserting after the first sentence the following: "The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in partisan political activities as apply to judges of the United States Court of Veterans Appeals."

(c) **APPOINTMENT AND REMOVAL OF BOARD MEMBERS.**—Section 7101(b) of such title is further amended—

(1) in paragraph (2)(A) by striking "other members of the Board (including the Vice Chairman)" and inserting "Board members other than the Chairman";

(2) in paragraph (2)(B) by striking "paragraph" and inserting "subparagraph"; and

(3) by striking paragraph (4) and inserting the following:

"(4) The Secretary shall designate one Board member as Vice Chairman based upon recommendations of the Chairman. The Chairman may designate one or more Board members as Deputy Vice Chairmen. The Vice Chairman and any Deputy Vice Chairman shall perform such functions as the Chairman may specify. The Vice Chairman shall serve as Vice Chairman at the pleasure of the Secretary. Any Deputy Vice Chairman shall serve as Deputy Vice Chairman at the pleasure of the Chairman."

(c) **ACTING BOARD MEMBERS.**—Section 7101(c) of such title is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) The Chairman may from time to time designate one or more employees of the Department to serve as acting Board members.";

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph by—

(A) striking "temporary Board members designated under this subsection and the number of"; and

(B) striking "section 7102(a)(2)(A)(ii) of this title" and inserting "paragraph (1)".

(d) **CHAIRMAN'S ANNUAL REPORT.**—Section 7101(d)(2) of such title is amended—

(1) by striking out "and" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) the names of those employees of the Department designated under subsection (c)(1) to serve as acting Board members during that year and the number of cases each such acting Board member participated in during that year."

(e) CONFORMING AMENDMENTS.—Section 7101 of such title is further amended—

(1) in subsection (d)(3)(B), by striking "section 7103(d)" and inserting "section 7101(a)(2)"; and

(2) in subsection (e), by striking "a temporary or" and inserting "an"

SEC. 12302. DECISIONS BY THE BOARD.

(a) ACTION BY BVA THROUGH SECTIONS.—Sections 7102 and 7103 of title 38, United States Code, are amended to read as follows:

"§ 7102. Decisions by the Board

"A proceeding instituted before the Board shall be assigned to an individual member or a panel of members of the Board (other than the Chairman). A member or panel of members who are assigned a proceeding shall render a decision thereon, including any motion filed in connection therewith. The member or panel of members shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the Board's final disposition of the proceeding. Decisions by a panel shall be made by a majority of the members of the panel.

"§ 7103. Reconsideration; correction of obvious errors

"(a) The decision of a member or panel of the Board under section 7102 of this title is final unless the Chairman orders reconsideration of the case. Such an order may be made on the Chairman's initiative or upon motion of the claimant.

"(b)(1) If the Chairman orders reconsideration in a case decided by a single member, the matter shall be referred to a panel of not less than three Board members, not including the member who rendered the initial decision, which shall render its decision after reviewing the entire record before the Board. Such decisions shall be made by a majority vote of the members of the panel and shall constitute the final decision of the Board.

"(2) If the Chairman orders reconsideration in a case decided by a panel of members, the matter shall be referred to an enlarged panel, not including the members of the panel which rendered the initial decision, which shall render its decision after reviewing the entire record before

the Board. Such decisions shall be made by a majority vote of the members of the expanded panel and shall constitute the final decision of the Board.

"(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration."

(b) **CLERICAL AMENDMENT.**—The items relating to sections 7102 and 7103 in the table of sections at the beginning of chapter 71 are amended to read as follows:

"7102. Decisions by the Board.

"7103. Reconsideration; correction of obvious errors."

SEC. 12303. TECHNICAL CORRECTION.

Section 7104(a) of title 38, United States Code, is amended by striking out "211(a)" and inserting in lieu thereof "511(a)".

SEC. 12304. HEARINGS.

(a) **IN GENERAL.**—Section 7110 of title 38, United States Code, is amended to read as follows:

"§ 7110. Hearings

"(a) The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.

"(b) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing will participate in making the final determination in the claim.

"(c)(1) An appellant may request a hearing before the Board at either its principal location or at a regional office of the Department. A hearing held at a regional office shall (except as provided in paragraph (2)) be scheduled for hearing in the order in which the requests for hearing in that area are received by the Department at the place specified by the Department for the filing of requests for those hearings.

"(2) In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hardship, a hearing may be scheduled at a time earlier than would be provided under paragraph (1).

"(d) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission, or picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location. When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or members as provided in subsection (c).

Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in subsection (c) shall not be affected."

(b) CLERICAL AMENDMENT.—The item relating to section 7110 in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

"7110. Hearings."

SEC. 12305. ELIMINATION OF REQUIREMENT FOR ANNUAL INCOME QUESTIONNAIRES.

Section 1506 of title 38, United States Code, is amended—

(1) in paragraph (2), by striking out "shall" and inserting in lieu thereof "may"; and

(2) in paragraph (3), by striking out "file a revised report" and inserting in lieu thereof "notify the Secretary".

INTRODUCTION

Shortly after taking office, President Clinton announced a 6-month review of the federal government to be headed by Vice President Gore. The National Performance Review was comprised of experienced federal employees from all corners of the government and was organized into a series of teams to examine both agencies and cross-cutting systems, such as budgeting, procurement and personnel. Each Cabinet department also was asked to create "Reinvention Teams" to begin experimenting with new ways of doing business and to lead transformation at their departments.

The goals of the National Performance Review (NPR) were to cut unnecessary spending and red tape, enhance service to users of government assistance, empower employees to get results, and reduce the size of government. To achieve these goals, the NPR report calls on agencies to create a clear sense of mission, delegate authority and responsibility, develop budgets based on outcomes, expose agency operations to competition, concentrate government on making decisions and directing the organization measure success by user satisfaction, and search for market, not administrative, solutions to problems facing the agency. Many of these goals were developed by the authors of the book *Reinventing Government*, David Osborne and Ted Gaebler. Like the authors of that book, the NPR team examined successful federal programs and searched for "organizations that produced results, satisfied customers, and increased productivity".

Many of the recommendations made by the NPR team affect the entire government. These include changing the annual budget process, decentralizing personnel policies, streamlining procurement, and giving the Inspectors General greater responsibility to prevent waste and abuse *before* it occurs. The NPR team also made a number of specific recommendations for each agency and department, including the Department of Veterans Affairs, which were published on September 7, 1993. Many of these recommendations do

not require legislation to implement, and are consistent with recommendations made by the Committee to the Department over the past several years. One of the recurring themes in the NPR report is that agencies themselves and the Office of Management and Budget are often the worst enemies of improved management. In fact, the NPR report notes that within DVA, a program to decentralize decision-making and free managers from unnecessary internal constraints had produced very encouraging results. However, the Department, after evaluating the results of this program, has failed to expand the program so that all VA facilities could operate with the same managerial freedom.

On October 26, 1993, the President transmitted draft legislation entitled the "Government Reform and Savings Act of 1993" to the Congress. The Majority Leader introduced this legislation on October 28, 1993 as H.R. 3400. Seventeen committees of the House were given until November 15, 1993 to report on that portion of the legislation within the committee's jurisdiction. Title XII of the legislation includes matters within the jurisdiction of the Committee on Veterans' Affairs. The legislation includes draft legislation which was transmitted to the Secretary of Veterans Affairs on August 13, 1993 "to improve and clarify certain adjudication and appeal procedures relating to claims for benefits under the laws administered by the Department of Veterans Affairs". The bill as introduced would also:

(1) Repeal certain limitations and restrictions on the organization of the Department and the Veterans Health Administration (VHA) and certain qualifications for officials in VHA;

(2) Modifies the closure of three Department supply depots located at Somerville, New Jersey, Hines, Illinois, and Bell, California; and

(3) Authorize the Secretary to gain access to the health care insurance data bank.

On May 6, 1993, the Subcommittee on Compensation, Pension and Insurance held an oversight hearing on adjudication of appeals by the Board of Veterans' Appeals. The witnesses were: Mr. Charles Cragin, Board of Veterans' Appeals, Department of Veterans Affairs; Mr. Bob Manhan, Veterans of Foreign Wars; Mr. Frank DeGeorge, Paralyzed Veterans of America; Mr. Philip R. Wilkerson, The American Legion; Mr. Joseph A. Violante, Disabled American Veterans; Mr. Michael F. Brinck, AMVETS; and Mr. Paul S. Egan, Vietnam Veterans of America.

On October 13, 1993 Subcommittee held a legislative hearing on H.R. 1796, 2341, and draft legislation on the operation of the Board of Veterans' Appeals. The witnesses were: Mr. Charles Cragin, Board of Veterans' Appeals, DVA; Col. Herb Rosenbleeth, Jewish War Veterans; Mr. James R. Peluso, National Association of State Directors of Veterans Affairs, State of New York; Mr. Richard J. Bernard, Deputy Commissioner of Veterans' Affairs, State of New Jersey; Dr. Charles A. Stenger, American Ex-Prisoners of War; Mr. Tom Miller, Blinded Veterans Association; Ms. Rose Lee, Gold Star Wives; Mr. Bob Manhan, VFW; Mr. Joseph Violante, DAV; Mr. Larry D. Rhea, Non-Commissioned Officers Association; Mrs. Jean Arthurs, National Association of Military Widows; Mr. John W. Morrison, National Association for Uniformed Services and the So-

ciety of Military Widows; Mr. Russell Mank, PVA; Mr. Earnest E. Howell, AMVETS; Col. Christopher J. Giaimo, Retired Officers Association; Mr. Philip R. Wilkerson, The American Legion; Mr. Bill Crandall, VVA; and Mr. Richard B. Frank, Board of Veterans Appeals Professional Association, Inc.

EXPLANATION OF COMMITTEE AMENDMENTS TO H.R. 3400

As amended, title XII of H.R. 3400 makes the following changes to existing law:

- (1) Accepts the administration proposal to repeal the requirement that the Secretary operate not less than 90,000 and not more than 125,000 hospital and nursing home beds.
- (2) Permits the Secretary to reduce the staffing of the Office of Inspector General after providing Congress with advance notice and justification for the reduction.
- (3) Makes the "notice and wait" requirement on certain agency reorganizations inapplicable to VA Central Office reorganizations. Shortens the waiting period from 90 to 45 days.
- (4) Repeals the requirement that the Veterans Health Administration (VHA) have certain organizational units in the Office of the Under Secretary for Health.
- (5) Allows the Secretary to waive the doctor of medicine requirement for one of the top three VHA officials. Would also require the Secretary to accord a priority to physicians when appointing a new Under Secretary for Health, and would require the Secretary to establish specific criteria to be used by the Under Secretary search commission. Also repeals statutory qualifications for Assistant Under Secretaries and certain VHA organizational requirements.
- (6) Waives the requirement that the Secretary wait 90 days before closing three existing supply depots.
- (7) Accepts the Administration proposals to:
 - (a) Allow the Chairman of BVA to assign appeals to single members of the BVA, instead of to three members;
 - (b) Remove the existing 65-member limit on the number of Board members;
 - (c) Allow BVA to conduct hearings by electronic or other means; and,
 - (d) Establish the positions of Deputy Vice Chairman of the BVA.
- (8) Establishes incentives to collect funds more aggressively by allowing VA to retain funds in excess of collections anticipated in the latest CBO baseline. 20% of funds would be returned to hospitals with better than average collection programs.
- (9) Repeals the requirement that VA pension recipients file an annual income questionnaire and allows VA to check reported income through other means, including using IRS data and through random checks.

BACKGROUND AND DISCUSSION

BED-LEVEL REQUIREMENTS

Section 12001(a) would amend section 8110 (a)(1) of title 38 to eliminate requirements for maintaining specific bed levels for hospital and nursing home beds. Current law requires that the Sec-

retary establish a combined hospital and nursing home bed capacity of not more than 125,000 and not less than 100,000 such beds. Current law further requires the Secretary to maintain and operate 90,000 such beds. Section 12001(a) would delete the specific authorized and operating bed requirements and the requirement that the President include in the budget funds sufficient to operate not less than 90,000 beds.

The Committee recognizes that these bed-level requirements have become outdated with changes in the practice of medicine. Average lengths of inpatient stay have dropped significantly over the years at the same time as medicine's ability to provide services through outpatient care has increased. VA no longer needs the numbers of hospital beds it once did. The VA's Commission on the Future Structure of VA Health Care and other experts have projected a further decline in the number of hospital beds needed in the years ahead. These trends have been exacerbated by funding and staffing shortages which have forced the Department to shut down beds.

It is the committee's understanding that VA officials have been circumventing the bed level requirements by reporting that more beds were in operation and available than were actually in use. The House Committee on Veterans Affairs conducted a survey in 1990 which highlighted the fact that there was a wide disparity in the number of official operating beds and the number of actual operating beds. The Committee survey found that more than 20,000 beds listed as operational were in fact not available for use at the time of the survey. Subsequent Departmental reviews showed that VA was operating approximately 55,000 hospital and 15,000 nursing home beds, far short of the 90,000 bed level requirement in Title 38. VA officials have cited resource constraints and staffing and equipment shortages as the major reasons for VA closing many of these beds.

Eliminating the specific bed-level requirements in no way alters VA's obligation to plan for and serve as a back-up to the Department of Defense during periods of war. In such instances, VA is to provide all necessary medical support to DoD and must be capable of providing inpatient medical care in VA facilities to DoD personnel. During the recent Persian Gulf War, VA identified 25,000 inpatient beds as available for use by DoD personnel.

The Committee remains committed to the maintenance and vitality of an independent VA health care system. It recognizes the importance of providing the system's managers sufficient flexibility to practice modern medicine and to allocate resources to best meet current and future patient care needs. Such flexibility is critical if VA is to be able to position itself to operate effectively and efficiently, particularly under any kind of revised national health care system.

MINIMUM STAFFING OF INSPECTOR GENERAL OFFICE

Pursuant to the Inspector General Act of 1978, VA established the Office of Inspector General within the Department. This Office is responsible for the audit and investigation of all Department of Veterans Affairs programs and operations. Under the Inspector General Act of 1978, the Secretary has an obligation to fund the

Office of Inspector General as necessary for the Office to carry out its mission. Current law requires that the Secretary shall provide for not less than 40 full-time positions in the Office of Inspector General in addition to the number of such positions in that office on March 15, 1989. The Committee is advised that the latter number is 383 positions. The Administration proposed eliminating that specific staffing requirement. The Committee amendment would modify that proposal. The amendment would lift the specific staffing level now in law, but require the Secretary to report to the appropriate Committees of the Congress in advance of any proposed reduction in IG staffing, and defer implementation of that proposal for a 45-day period (consistent with the requirements of section 510(b) of title 38, U.S. Code, as amended by the Committee amendment).

The Committee concurs that maintenance of specific staffing levels in law is ill-advised and believes that the Secretary should have the flexibility to determine the appropriate staffing levels needed to meet the requirements of the Office of Inspector General. Nevertheless, the unique and critical responsibilities assigned the Inspector General, and the independence that official is to enjoy, require the establishment of an appropriate safeguard against the danger of some future arbitrary downsizing of that Office. The "report and wait" mechanism in the Committee amendment would serve both to deter inappropriate action and to provide an effective means for the Committees to assure that proposed IG staffing reductions not compromise that Office's effectiveness.

SECRETARY'S ADMINISTRATIVE REORGANIZATION AUTHORITY

Prior to 1981, there were few statutory restrictions on the powers of the head of the Department of Veterans Affairs to "consolidate, eliminate, abolish, or redistribute the functions of the bureaus, agencies, offices, or activities" of the Department. In 1981, however, an ill-considered proposal was made by the Administration to consolidate the adjudication and loan guaranty functions of the 58 regional offices of the Veterans Benefits Administration into one location. This proposal would have required the relocation of thousands of employees, and was viewed by veterans organizations and many members of Congress as a means of diminishing access to services and benefits provided by existing regional offices. As a result, the Congress enacted "report and wait" restrictions (now codified in section 510(b) of title 38, United States Code) on the Secretary's ability to carry out any major reorganization of the Department.

Shortly after the President signed Public Law 97-66 in 1981, the Office of Management and Budget began a campaign to repeal the restrictions on reorganizations and incorrectly characterized the limitations as an example of Congressional "micromanagement" of the Department. The restrictions do not require the Administration to take any particular action. They do, however, enable Congress to exercise its oversight responsibilities and insure that the best interests of veterans and the taxpayers are being served.

In the case of the proposed 1981 reorganization, Congress prevented an irrational and short-sighted proposal from being carried out, saving veterans and VA employees a great deal of frustration

and anxiety, and the taxpayers a significant amount of money. In the face of Congressional refusal to act on repeated OMB proposals to repeal the restrictions, the Administration again proposed the consolidation of VBA regional office activities in 1985. Because OMB's proposals were essentially devoid of information which would allow Congress to evaluate the merits of the proposed reorganization, Congress amended existing law to require any recommended reorganization plan to include detailed supporting information.

In again proposing to repeal the section 510(b) reorganization restrictions (in effect, denying Congress any opportunity to oversee the organization of a vital service and benefit provider), the current Administration ignores the legitimate Constitutional role of Congress in overseeing and reviewing the organization and functions of the Department of Veterans Affairs. By contrast, on January 25, 1990, the Secretary of Veterans Affairs transmitted proposed legislation to modify, but not repeal, portions of former section 210(b). In this letter, the Secretary expressed the view that "the constraints of [former] section 210 have unduly affected the ability of the Secretary to efficiently manage the Department [and that] . . . these constraints can be somewhat relaxed, so that more timely organizational adjustments can be effected, without disturbing the underlying concerns which led to enactment of the section, the reduction of services to veterans."

In response to this request, the Committee reported legislation (section 301 of H.R. 5740, 101st Congress) on October 13, 1990, modifying section 510 to grant the Secretary greater management flexibility. This revision to section 510 was eventually enacted as part of the Department of Veterans Affairs Codification Act, P.L. 102-83. As the Committee report on this provision noted:

Section 301 would relax existing restrictions on reorganizations in three significant ways. First, it would amend the requirement that details of the proposed reorganization be submitted with the budget and that no action to carry out the reorganization take place until the first day of the following fiscal year. Under the reported bill, the Secretary could submit the details of a proposed reorganization at any time; however, no action could be taken to carry it out until the end of a 60-day period of continuous session of Congress following the date of the submission of the report. For purposes of this "60-day clock", days on which either House of Congress had adjourned for more than three days to a day certain (which under Article I, section 5 of the Constitution, requires the consent of the other House) or periods between Congresses would not advance the clock; the only days which would count in calculating when the 60-day period had elapsed are those when Congress is conducting its normal business. It should be noted that Saturdays, Sundays, and holidays would advance the clock unless Congress had adjourned either sine die or for more than three days to a day certain.

The second change to section 210 of title 38, United States Code, made by the reported bill is that the thresholds of reportable reorganizations are raised to give the

Secretary greater flexibility. Under existing law, a proposed reorganization which affects 10 percent or more of the employees at a covered office or facility in any fiscal year, or 15 percent or more over two years, must be reported at the time the budget is submitted. The reported bill changes these percentages to 15 and 25 percent respectively. In addition, under existing law, a proposed reorganization which affects a covered Central Office unit that is the permanent duty station for 100 or more employees must be reported at the time the budget is submitted. A proposed reorganization which affects a Central Office unit with more than 25 but less than 100 employees requires only the submission of a report 30 days before the reorganization is implemented. The reported bill would revise these limitations by (1) eliminating the 30-day notice requirement for reorganizations of Central Office units with less than 100 employees, allowing such a reorganization to take place without any advance notice; and (2) replacing the existing "report and wait" requirement on reorganizations of Central Office units with 100 or more employees with a simple 30-day advance notice requirement.

Finally, section 301 would allow "reorganizations in place" to occur without any advance notice or report. A "reorganization in place" is one in which the same number of employees continues to perform the same functions at the same field office, facility, or center. In effect, the only change is a "paper" change, one in which the "bureau, agency or office" in which the employees work changes, but the number of employees, their work location, and their functions remain essentially unchanged. In other words, the organization responsible for the covered field office or facility changes, but the field office or facility remains essentially unchanged. This exemption applies to consolidations or redistributions of function at VBA/VHSRA medical and regional office centers, and at other covered field offices and facilities.

In enacting these proposals, Congress made only one change to section 301 of H.R. 5740 as reported by the committee. The proposed waiting period was increased from 60 days to 90 days.

Despite Congress' willingness to modify section 510, the Administration disregarded the requirements of the law when it decided to permanently close the Martinez, California VA Medical Center in 1991. The lack of planning and justification for this decision is evident from subsequent events. It is inconceivable to the Committee that VA has not adopted a more expedited approach to restoring veterans' access to inpatient care in the area served by the former Martinez hospital. The committee notes that had the VA prepared the analysis and justification required by section 510(b), several mistakes and delays could have been avoided.

Originally, VA plans called for strengthening the main hospital building at Martinez to make it seismically safe. Congress approved this proposal and appropriated funds to begin this project in 1990. However, VA inexplicably decided to close the hospital in 1991 and simultaneously announced plans to construct a new hos-

pital on the campus of the University of California at Davis. The committee recognizes that the Secretary based his decision on the most recent information concerning the potential hazard to veterans if a strong earthquake occurred near Martinez. It should be pointed out, however, that when the 1989 Loma Prieta earthquake forced the VA to shut down the main hospital building at the Palo Alto VAMC, located only 50 miles from the Martinez facility, the VA constructed temporary facilities and converted existing seismically-safe facilities to provide inpatient care while construction of seismically-safe facilities took place. As a result of the hurried planning and inadequate cost analysis, the VA later determined it would not build a new hospital at the Davis site. Finally, after consistent prodding by Rep. George Miller, other members of the California congressional delegation, and this Committee, the VA announced that it would immediately begin construction of an outpatient clinic and nursing home on the site of the closed Martinez hospital, and that it would consider building the new hospital either in downtown Sacramento or at Travis Air Force Base in Fairfield, California.

Although VA has completed construction of the outpatient clinic on the Martinez site, veterans who were formerly served by the Martinez hospital have recently been advised by the VA that construction of the new facility at Travis Air Force Base will not be completed until 1999, eight years after closure of the Martinez inpatient facility. At the urging of Rep. Dan Hamburg, the Department of Veterans Affairs has assured the Committee that the new VA addition to the Travis AFB hospital will be completed in 1988. Groundbreaking for the first phase of the construction is expected to take place in the first half of 1994.

The notion expressed in a General Counsel Advisory Opinion dated September 13, 1991, that there is an implied exception in section 510(b) for an emergency reorganization is contrary to the express words of the statute, and the Committee strongly objects to the logic and conclusion of this opinion. Congress did not intend in 1981 to grant the Secretary an emergency power to close a VA facility. Moreover, to imply that an emergency existed at Martinez completely ignores the fact that VA had been considering plans to strengthen the seismically-unsafe Martinez facility for over seven years. There was no "sudden, urgent, unforeseen occurrence or occasion requiring immediate action", which is the common understanding of an emergency. It should be noted that despite the seismic unsoundness of the Martinez hospital, the building sustained no damage during the Loma Prieta earthquake in 1989. Additionally, an emergency cannot be said to exist when VA recognizes a seismic danger in 1983, does not seek funding to correct that danger until 1989, and subsequently decides in 1991, after it has received the funding, to simply close the facility.

The Committee notes that the reorganization at Martinez was not inevitable, even if it was necessary to shut down a substantial portion of the facility for an extended period of time. Section 510(b) applies to a reduction in full-time equivalent employees with permanent duty stations at a covered office or facility. In the case of the Martinez facility, many employees were offered temporary assignments at nearby VA facilities, and a core group did not experi-

ence any change in employment status. In any event, the necessity of phasing down operations at the Martinez facility required the VA to continue employment for most VA employees for a period of time that would have permitted the required notice and waiting period to occur. Following the initial decision to close the facility, the VA began planning for the closure of Martinez in early 1991, and it announced in August of that year that the facility would be closed over a 120-day period. Clearly, there was adequate time to prepare the notice and justification required by section 510(b). Finally, it should be noted that Congress has granted statutory waivers of the 510(b) waiting requirement when requested and justified by the Administration.

Modifications to existing law

The consequences of VA's efforts to shield its decision-making with respect to the Martinez closure demonstrate that section 510(b) serves a valid, indeed, vital purpose. That purpose is to enable Congress to evaluate VA's plans to provide services to veterans, and to alter or modify ill-conceived plans which would disrupt those services. This objective is no less valid today than it was when the law was enacted in 1981.

In proposing to repeal section 510(b), the Administration cites the need to "increase efficiency" as justification for this recommendation. However, it has become all too clear in recent years that VA officials have only the vaguest indicators of performance at its many field facilities. In the past 12 years, several "reorganization" proposals have emerged during the budget process without any study or analysis of the effect on efficiency. Indeed, the Executive Branch's failure to articulate program goals and pay sufficient attention to program performance and results led the Congress to enact the "Government Performance and Results Act of 1993", P.L. 103-62. In urging the Congress to swiftly pass this legislation, the Director of OMB, speaking for the Administration, implicitly recognized the absence of reliable performance indicators in most agencies and departments. Before VA begins to reorganize to "increase efficiency", it must establish legitimate performance indicators for each of its hundreds of field facilities. The Committee may reconsider proposals to repeal section 510(b) when accurate and readily available indicators of performance and efficiency are published.

Although the Committee is not reporting the legislation recommended by the Administration for the reasons cited above, it has determined that other modifications to existing law are justified. Current law requires the Secretary to report a reorganization of a Central Office unit which is the duty station for 80 or more employees if the reduction affects more than 50 percent of the employees. The Committee agrees to eliminate this restriction. Additionally, other provisions of the bill give the Secretary and the Under Secretary for Health greater flexibility to reorganize the Veterans Health Administration.

In addition, the existing 90 day period during which VA can take no action to implement a proposed reorganization may be longer than necessary, especially given the possibility of changes to VA facilities made necessary by national health legislation. Accordingly,

the Committee recommends that this period be shortened to 45 days. Finally, the committee has included express and limited authority to implement an administrative reorganization in the event a real emergency occurs at a VA medical facility.

VETERANS HEALTH ADMINISTRATION ORGANIZATION

Section 7305 of Title 38 requires that the Veterans Health Administration include the following services: the Office of the Under Secretary for Health, a Medical Service, a Dental Service, a Podiatric Service, an Optometric Service, a Nursing Service. In addition, the Secretary may include any other services that are determined to be necessary in carrying out the functions of the Administration.

Section 12004 would repeal section 7305. Such repeal is simply intended to vest the Secretary with discretion as to how best to organize those services required to provide a complete medical and hospital service.

PHYSICIAN REQUIREMENTS FOR SENIOR OFFICIALS

Section 12005 of H.R. 3400 proposes eliminating the statutory requirements on the Office of the Under Secretary for Health. Among the effects of that proposal would be to eliminate requirements that that office include a Deputy Under Secretary for Health and an Associate Deputy Under Secretary, and that those positions be filled by physicians.

The Committee concurs in principle with the apparent aim of that proposal, to provide the Under Secretary greater latitude to organize that official's office. But the Committee believes that that latitude must be balanced against the need to ensure that the highest levels of VHA management retain physician leadership.

Section 12005 would amend sections 305 and 7306 of title 38 to meet those goals.

The amendments to section 305 stem in part from a legislative proposal advanced by the Department of Veterans Affairs on September 16, 1993 separately from H.R. 3400. The Department submitted that proposal after a reportedly unsuccessful search of many months' duration for a new Under Secretary, and requested the introduction and enactment of legislation to lift the physician requirement for that position. The Department framed this request in terms of a quest for greater latitude to find the most qualified person for this important position.

VA has been well served by physicians occupying the most senior positions in the Veterans Health Administration and the Department of Medicine and Surgery. This Committee does not lightly turn away from the vital and unique contributions physician-leaders can and do provide the Veterans Health Administration. Whether in the role of advising a Secretary of Veterans Affairs on the Department's research budget, negotiating with physician peers in other Federal Departments or appearing before committees of the Congress, a physician brings a unique expertise, insight and stature.

Yet there is force to the view that at this critical juncture, particularly, VHA needs the most able leadership. A new Under Secretary will face major challenges. Dramatic changes are underway

within the national health care "system" which, even without enactment of a national health care reform bill, will require "reforming" the VA health care system. The inevitability of such change, and the prospect that that change may be sweeping and complex, underscores the importance of assuring the most able VHA leadership. While physicians have long provided that leadership, it could conceivably also come from another clinical perspective or another sector.

With respect to the Under Secretary post, the Department's request that Congress lift the physician requirement, however, raises questions. Its request provided no insight into the kind of analysis that led the Department to the specific legislative solution it proposed. Moreover, the request provided no insight into the nature of the process by which the search itself had been conducted, or the basis on which a search committee would proceed under the proposed legislation. The Department offered no hint, for example, as to how it envisioned the search committee would weigh physicians against non-physicians in identifying the "most qualified" candidate.

It has become clear to the Committee that the Department's administration of the search process was flawed. This Committee would have anticipated that that process would be thorough, methodical, and constituted so as to avoid any reasonable criticism. The evidence suggests otherwise. The Committee finds particularly disturbing, for example, the Department's failure to have furnished the members of the search commission any criteria by which to evaluate candidates other than the requirements of the law itself. The significance of that failure is all the more striking in light of the Committee's understanding that of some 54 candidates judged to be qualified only eight were interviewed.

The composition of the search commission is set by law, and includes substantial representation from activities affected by the Veterans Health Administration. VA gains immeasurably from the experience and insight of eminent professionals who participate in such a process. But it is unreasonable for the Department to abdicate taking a role which extends much beyond establishing the search commission and hosting its meetings. In fairness to the commission members themselves, the Department owes them substantial guidance on the criteria they should employ in conducting their evaluations and their determinations on whom to interview. Absent specific, sound criteria, the process is open to the criticism that it is not free from the potential for arbitrary and capricious decision-making. Neither the Secretary nor the Commission members should tolerate a process open to such a perception.

In the belief that the Department would share that view, the Subcommittee on Hospitals and Health Care has sought assurances from the Secretary that the Department would address these and related concerns regarding the search process. Regrettably the Secretary has declined to do so or to provide assurances to that effect.

The Committee amendment would amend section 305, accordingly, to address its concerns regarding the conduct of the search process, while at the same time providing greater latitude in filling that position. The amendment would provide that if at the time a search commission were established the positions of Deputy and

Associate Deputy Under Secretary were held by physicians the Under Secretary could be a non-physician. In either case, however, the amendment would require the Secretary to develop and furnish to the search commission specific criteria which the commission shall use in evaluating candidates. The amendment would further require that, in the case where the physician requirement was not applicable in filling the Under Secretary position, the commission shall accord a priority to the selection of a physician over a non-physician.

This physician priority requirement does not mean that non-physicians may only be considered if the commission cannot identify a physician who meets the specific criteria developed by the Secretary. It does contemplate, however, that the criteria reflect and give weight to clinical experience and particularly to that of a physician. The Committee would expect that the criteria would also be weighted in a manner that would ensure that those individuals recommended for appointment would have a background which would provide a level of sensitivity to patients' needs comparable to that gained from clinical practice.

The physician priority should also be read in the context of the requirement in law that the commission recommend at least three individuals for appointment. It is inconceivable that a meaningful priority could have been afforded physicians if such a list of recommended candidates included only a single physician or failed to include any.

The Committee does not presume to dictate to the Secretary the list of criteria that official should establish. Such criteria should, however, take account of VA's potential role as a competitor under health reform. They should also recognize VA's broad and relatively unique role as a provider of long-term care and psychiatric care, and should give additional weight to candidates with such experience.

As regards the two positions immediately subordinate to the Under Secretary, the measure would make conforming amendments to section 7306 to permit the appointment of a non-physician to either the Deputy or Associate Deputy Under Secretary positions when two of the top three positions in the Veterans Health Administration are held by physicians.

Current law establishes a series of positions in the Office of the Under Secretary for Health, which in addition to a Deputy and Associate Deputy Under Secretary for Health, include specified service directors and a maximum number of Assistant Under Secretary for Health positions. The law also establishes qualifications for several of those positions. Section 12005(b) would eliminate specific staffing requirements in the Office of the Under Secretary below the level of the Associate Deputy Under Secretary. The Committee amendment would adopt the Administration proposal to provide simply for such positions as may be considered necessary for the purposes of the chapter, but would add language to provide that in appointing persons to positions in the office, the Under Secretary shall consider the mix of health care services provided veteran-patients by VHA and seek to ensure that appointments in the Office are made so that it is staffed to provide the Under Secretary appropriate expertise in such services. The elimination of these staffing

requirements should not be interpreted as a signal of the Committee's dissatisfaction with the current VHA organizational structure. Rather, the amendment reflects the Committee's belief that the Department should have as much flexibility as needed to create the organizational structure needed to provide the capacity to ensure that VHA effectively addresses veterans health care needs.

The Committee fully expects that the Under Secretary would continue to place appropriate emphasis on services such as nursing, pharmacy, optometry, and podiatry. It is noteworthy that current law does little to ensure such emphasis. The Committee amendment has the effect of providing that emphasis by requiring that the Under Secretary consider the range of services provided to veterans and ensure the appointment of individuals who can provide the Under Secretary expertise in such services.

ENHANCE VA COST RECOVERY INCENTIVES

Under existing law, collections under section 1729 are deposited in the Medical-Care Cost Recovery Fund. In essence, after paying certain costs related to the costs of collection from the Fund, the Secretary is required to deposit the Fund's unobligated balance into the Treasury as miscellaneous receipts.

VA's implementation of its third-party collections authority has over the years sparked debate regarding the relationship between the magnitude of its actual recoveries and the relative incentive or lack of incentive to achieve those recoveries. Reports issued by the General Accounting Office (GAO) in 1990 documented the wide variation in cost-recovery performance among VA medical centers and VA's potential to collect substantially more. (VA Health Care: Better Procedures Needed to Maximize Collections from Health Insurers (GAO/HRD-90-64, April 6, 1990) and VA Health Care: Medical Centers Need to Improve Collection of Veterans' Copayments (GAO/HRD-90-77, March 28, 1990). In capsule, GAO concluded that VA was unable to realize fully its cost-recovery potential because of ineffective collection procedures and medical centers' reluctance to devote already limited resources to maximize collections. As originally enacted and amended in 1986, section 1729 provided simply that recoveries would be deposited in the Treasury as miscellaneous receipts.

The enactment of provisions in 1990 authorizing VA to retain sufficient funds to cover the cost of collections has unquestionably provided a greater incentive than had existed under prior law. Success in medical care cost recoveries requires wide-ranging dedication and cooperation within the medical center. While recent changes in law covering the cost of collections have proven helpful (VA collected \$506 million in fiscal year 1993 and \$448 million in 1992), funding the costs of administration does not necessarily assure maximum success. As this Committee has noted on several occasions, although VA medical centers have in many cases achieved significant levels of cost recovery in recent years, an allocation system which provides a tangible reward—in new monies available for program enrichment—would provide all personnel with a real incentive to enhance recoveries. Such considerations have prompted this Committee to attempt to provide greater incentives than those set in existing law to increase collections. Such proposals (H.R.

5114 in the 100th Congress, H.R. 901 in the 101st Congress and H.R. 5192 in the 102d) would have required that a percentage of collections be retained at the medical center or allocated to centers that were collecting larger amounts than expected. In developing those bills, it was the Committee's intention to apply lessons learned in the private sector: to use incentives not only to enhance recoveries, but to help alleviate funding problems.

The committee amendment would test the effectiveness of such incentives, while adhering to the principle of achieving budget-neutrality. To increase existing incentives to maximize third party recovery efforts, the bill would revise the allocation formula for fiscal years 1994 through 1998 regarding payments from the Medical-Care Cost Recovery (MCCR) Fund. Specifically, the bill would make available to VA funds representing the amount by which third-party recoveries in a fiscal year exceed the August 1993 CBO baseline estimate of those third-party recoveries for that fiscal year. The availability of these funds for spending, however, is tied, at least in part, to calculations which cannot be completed before the close of the fiscal year. Accordingly, the reported bill would authorize VA to spend such funds in the following fiscal year.

The bill would also amend section 1729(g) of title 38, United States Code, to establish a spending formula in connection with the changes to the allocation system governing the MCCR Fund. In setting that formula, the Committee seeks to balance the importance of an incentive for the individual medical center to aggressively collect and recover from third party payors with an enormous need throughout the VA system, the need to replace medical equipment. In that regard, Committee hearings over the past several years produced testimony to the effect that VA's replacement medical equipment backlog is approaching \$1 billion. The failure to replace aging equipment poses the threat of serious quality-of-care problems if left unaddressed. The Committee amendment sets its allocation formula with that concern in mind. Thus, of those monies available to VA under the bill, 80 percent would be available to pay for the procurement of needed medical equipment. The bill directs that the remaining 20 percent shall be made available directly to those medical centers at which recoveries and collections have been at above average levels. The allocation of monies directly to those medical centers is to be based on a methodology which VA shall develop. The reported bill would require that methodology be designed to provide incentives to directors to increase recoveries and collections.

CLOSURE OF SUPPLY DEPOTS

The Committee amendment would require the Secretary to phase out and close the VA Supply Depots at Somerville, New Jersey, Hines, Illinois, and Bell, California over a two-year period beginning in 1994. The amendment would also waive the requirement of section 510 of title 38, United States Code, that the Department avoid taking any steps to implement this reorganization plan for 90 days after submitting the notice required by that section. The Committee amendment rejects the proposal to transfer a total of \$89 million from the Fund to the U.S. Treasury over the next two fiscal years. According to the Administration, this amount represents

funds that will be realized in fiscal years 1994 and 1995 from the sale of inventories that will not need to be replaced..

In a letter to the committee dated October 21, 1993, the Secretary of Veterans Affairs submitted the notification required by section 510(b) of title 38, United States Code. The letter also included a plan for a new approach to acquisition and distribution of supplies to all Department facilities. The plan calls for closure of the three supply depots and conversion to a commercial Just-In-Time delivery system. These changes will result in reductions in personnel, inventories, and all other costs associated with the VA supply function, and will produce an annual savings of approximately \$11 million.

The VA Supply Fund is a revolving fund established by Congress for the "procurement of supplies, equipment, and personal services and repair and reclamation of used, spent, or excess personal property". No direct appropriations are made to support the Supply Fund's activities. As a result of recent changes made in the method VA uses to acquire pharmaceutical items, the committee accepts the VA's decision to close the supply depots. However, the Task Force which recommended the closure also made significant recommendations as to how VA could invest the non-recurring savings generated by the sell-off of existing inventories to help provide more efficient and cost-effective services to veterans. Although these initiatives are still in the conceptual phase, it is clear to the committee that the \$4 million cost of equipping one consolidated mail outpatient pharmacy would be a good investment for the VA to make if it had sufficient funds. There are numerous other examples where VA could save money and provide better-quality care to veterans if it were able to invest in certain capital items.

The committee notes that the National Performance Review calls for the establishment of a Working Capital Fund in the VA to use existing resources in the Department for certain selected needs. It is the committee's view that the Supply Fund can serve a similar function by using revenue accumulated over the years to finance improvements and enhancements in VA health care and other benefit delivery functions. These opportunities would be significantly reduced if the Supply Fund were forced to transfer accumulated profits to the Treasury. Therefore, the committee rejects this proposal.

BOARD OF VETERANS' APPEALS

Section 12301 would amend current section 7101(a) of title 38 to codify the current position of Deputy Vice Chairman of the BVA and would remove the current limitation on the number of Board members, currently 65, in addition to the chairman and vice chairman of the Board. Given the additional procedural requirements which have evolved as the result of numerous decisions of the United States Court of Veterans Appeals, the number of cases decided by the BVA has declined severely in the past three years. The VA projects further declines in timeliness if the current number of Board members is retained.

The Committee believes the current, somewhat arbitrary, cap on the number of Board members should be lifted to permit the Secretary of Veterans Affairs to comply with the statutory requirement

in section 7101 that the Board have "such number of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a *timely manner*." (Emphasis supplied). Removal of the cap is fully consistent with the overall goal of improving the timeliness of the VA adjudication and appeals process.

This section would also impose certain ethical and legal limitations and restrictions concerning involvement in partisan political activities on the Chairman of the BVA by subjecting the Chairman to the same limitations and restrictions as apply to judges of the United States Court of Veterans Appeals. The Committee believes the unique position of the Chairman of the Board requires the same ethical and legal considerations as are expected of judges. The Committee believes that such provision would serve to bolster the independence of any individual occupying that position.

This section would also eliminate current authority for the Chairman to appoint "temporary" Board members, but would replace such authority with the ability to appoint "acting" Board members subject to different restrictions than those currently applicable to temporary members. This will promote greater continuity in the makeup of the Board.

Section 12302 would amend section 7102 of title 38 to authorize single-member decisions by members (other than the Chairman) of the BVA. The Chairman would continue to have the authority to assign a matter to a panel of Board members as appropriate. If such an assignment were made, the decision of the panel would be by a majority vote. Under the current statutory framework, the BVA is made up of a maximum of 67 Board Members, and is divided into 21 Sections of 3 Members. Current law requires that all BVA decisions be made by three-member Board sections based on a majority vote. It is anticipated by the VA that enactment of this provision will improve the Board's efficiency by as much as 25 percent.

This section would also amend section 7103 of title 38 to provide that, should the Chairman determine that reconsideration of the appeal is appropriate, either on the chairman's initiative or upon a motion of a claimant, the matter will be referred to a panel of not less than three Board members. Such panel should not include any Board member who may have rendered an initial decision on an appeal. In any case where an initial decision was rendered by a panel of members, the chairman would be required to refer the matter to an expanded panel, again not including any member who took part in the initial decision. In the case of any reconsideration by a panel of members or by an expanded panel a decision on such matter would be based on a majority vote of the members of the panel. This would constitute the final decision of the Board.

Section 12304 would amend section 7110 of title 38 to restate current law with respect to the provision of hearings to appellants and would authorize the use of electronic means (with the consent, or at the request, of individual appellants) to enable appellants to participate in hearings before the Board at locations closer to the appellant's home, as opposed to hearings before the Board in Washington, DC. The Committee firmly believes that the Board should be authorized to utilize all reasonable technological resources as

may become available in the future so as to promote greater efficiency in the processing of veterans' appeals. This section would also provide that requests for hearings at regional offices of the VA will be scheduled in the order in which such requests in that particular area are received, but that, if a claimant is seriously ill or under severe financial hardship, a hearing may be scheduled for earlier consideration than would otherwise be provided.

Section 12305 would remove a mandatory provision in section 1506 of title 38 that, as a condition for the continued payment of non-service-connected disability pension under chapter 15 the Secretary require from each recipient a report of income received during the previous year and an estimate of income to be received during the current year. VA reviews these income questionnaires once a year and makes adjustments to the monthly benefit, including the establishment of overpayments.

This section would authorize, but not require, this annual submission. The VA estimates that approximately 75 percent of pension recipients have either no outside income or that their sole source of income is from Social Security. In these cases, the annual questionnaire is no longer necessary because VA can verify income from Social Security and it can also use IRS data to verify accurate reporting of income. In addition, it is believed that at least 200 FTEE would become available for other adjudication activities. This will allow the VA to continue sending the questionnaires to the remaining 25 percent who may have outside income or unusual medical expenses. There is nothing in this provision that would prevent the VA from conducting random sampling from this group or from requiring certain classes of individuals to continue to report income on an annual basis.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

ADMINISTRATION VIEWS

There follows the President's transmittal of a draft bill entitled the "Government Reform and Savings Act of 1993" and a section-by-section analysis thereon, as well as a letter from the Secretary of Veterans Affairs transmitting a draft bill entitled "Veterans' Appeals Improvement Act of 1993".

THE WHITE HOUSE, October 26, 1993.

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Government Reform and Savings Act of 1993". This legislation is based on the recommendations of the National Performance Review (NPR). Also transmitted is a section-by-section analysis.

The goal of the NPR is to provide the American people with a more effective, efficient, and responsive government—a government that works better and costs less. The NPR began on March 3, 1993, when I asked Vice President Gore to conduct an intensive 6-month review of how the Federal Government works. The Vice President organized a team of experienced Federal employees from all corners of government to examine both agencies and cross-cutting systems, such as budgeting, financial management, procurement, and personnel. He spoke with employees at every major agency and sought the views of hundreds of organizations, business leaders, and State and local officials.

The NPR report presents numerous proposals, some of which require legislation, some of which can be achieved through administrative action. The legislation I am presenting today is a major step in implementing those NPR recommendations that require action by the Congress. I plan to include additional NPR proposals in the Fiscal Year 1995 Budget.

This legislation includes proposals that seek to: consolidate and streamline agency operations; eliminate unnecessary programs; end unneeded subsidies; improve financial management and debt collection; reduce any burdens resulting from statutory reporting requirements; and improve the dissemination of government information. They were selected from the NPR report with the expectation that they can be considered expeditiously by the Congress. It is my hope that these recommendations will be passed by the Congress prior to adjournment this year.

The savings total for the legislation I am submitting today is \$9 billion.

To accompany these NPR recommendations, a package of rescissions will be sent to the Congress shortly. The Administration is also working with the appropriate committees of jurisdiction on a major procurement reform measure.

By implementing these recommendations, I believe we can make fundamental changes for the better in the performance of the Federal Government. I pledge to work with the Congress to ensure the prompt enactment of this legislation.

WILLIAM J. CLINTON.

EXTRACT OF SECTION-BY-SECTION ANALYSIS

* * * * *

TITLE XII—DEPARTMENT OF VETERANS AFFAIRS

Subtitle A—Remove certain limitations and restrictions contained in veterans law

Section 12001 would remove a number of limitations and restrictions contained in veterans laws. Reducing or eliminating these requirements can increase efficiency and improve service without sacrificing accountability.

Subsection (a) would amend paragraph (1) of subsection (a) of section 8110 of title 38, United States Code by striking the words “at not more than 125,000 and not less than 100,000” in the first sentence, and by striking the third and fourth sentence. By so doing, section 12001(a) would eliminate the requirements that:

VA establish a combined hospital and nursing home bed capacity of not more than 125,000 and not less than 100,000;

VA operate and maintain not less than 90,000 such beds; and the President include in the Budget sufficient funding for not less than 90,000 operational beds.

These bed level requirements are outdated because the practice of medicine has evolved since they were enacted. Eliminating them would permit VA to get an accurate assessment of its current operating beds, and allow the Department to make appropriate adjustments in the future as the nature of health care delivery evolves.

Subsection (a) would also amend subsection (a) of section 8111 by eliminating all references to bed level requirements contained in section 8110(a) as these requirements would be deleted by section 12001(a) of this bill.

Subsection (b) would eliminate the requirement that the Secretary fund at least 40 full-time positions for the Office of Inspector General. The Secretary has an obligation under the Inspector General Act of 1978 to fund the Office of Inspector General as necessary for the Office to carry out its mission. The Secretary should be allowed, and trusted, to meet that obligation as he deems appropriate.

Subsection (c) would eliminate the requirement that the Secretary report to congress prior to executing any agency reorganizations. If such reorganizations are consistent with law they would then be carried out as soon as possible. The Administration agrees that the Department should reorganize only as consistent with law to carry out its current duties; that requirement will still be imposed under title 38. However, reporting such reorganizations to Congress before they are implemented, as under current law, delays Department action pending congressional review. Congress through the several Veterans Affairs Committees and their subcommittees already has the means and the power to conduct oversight of the Department's operations. Further review of its reorganizations delays action that will allow the Agency to operate more efficiently. Subsection (c) would allow the Agency to act to reorganize as necessary to increase efficiency subject only to the routine oversight of the Congress.

Subsection (d) would eliminate the requirement that the Secretary maintain specific services in the Veterans Health Administration (VHA). VHA's organization should reflect the specific medical, research and teaching needs in connection with the provision of medical care that are imposed on VHA by law. Ultimately, these needs may require the medical, dental, podiatric, optometric, and nursing services required by law. That determination should be left to the decision of the Secretary who may determine the relative importance of each such service in light of the actual functioning of the Agency. Accordingly, the bill would eliminate the statutory requirement that VHA maintain specific services.

Subsection (e) would eliminate the statutory requirements on the Office of the Under Secretary for Health and allow the Department to organize and staff the office of the Under Secretary for Health as appropriate to meet the needs of the VHA and the patients it serves. The law presently imposes rigid requirements on both the

organization and staffing levels in the office of the Under Secretary for Health. The Administration believes that efficient government would best be served by allowing the organization of that office to reflect the needs of the Department, subject only to congressional oversight and funding limitations on the structure and staffing of the office of the Under Secretary for Health.

Subtitle B—Closure of supply depots and transfer of revolving supply fund money

Section 12101 would require the Secretary of Veterans Affairs to phase out and close the Department of Veterans Affairs (VA) centralized depot and distribution centers in Somerville, New Jersey; Hines, Illinois; and Bell, California and to transfer to the General Fund of the Treasury, \$45 million by September 30, 1994, and \$44 million by September 30, 1995, from the Department of Veterans Affairs Revolving Supply Fund. This money represents funds that the Department will realize in fiscal years 1994 and 1995, respectively, from the sale of inventories that will not need to be replaced as a result of the phase-out and closure of the VA supply depots, with VA converting to a commercial just-in-time delivery system. The phase-out and closure of the depots will begin in fiscal year 1994 and finish by the end of fiscal year 1995.

Subtitle C—Provision of information from the medicare and medic-aid coverage data bank to the Department of Veterans Affairs

Section 12201 would provide for the disclosure of health insurance information from the Medicare and Medicaid Coverage Data Bank to the Secretary of Veterans Affairs. The information would assist the Secretary of Veterans Affairs in identifying and collecting reimbursements from third parties responsible for care and services provided to veterans.

Subtitle D—Veterans' Appeals Improvement Act of 1993

Section 12301 lists the subtitle's short title and makes references to title 38, United States Code.

Subsection (a) states the subtitle's title: Veterans' Appeals Improvement Act of 1993.

Subsection (b) provides that an amendment of a section or other provision of law made by this bill shall be considered an amendment of a section or other provision of title 38, United States Code, unless expressly provided otherwise.

Section 12302 lists the composition of the Board of Veterans, Appeals.

Subsection (a) would amend current section 7101(a) to codify the position of Deputy Vice Chairman of the Board of Veterans' Appeals and to remove the current 65-member limit on membership of the Board. It would also divide current section 7101(a) into two paragraphs and consolidate two nearly identical sentences in current section 7101(a).

Subsection (b) would amend current section 7101(b) to simplify and technically correct its language, to authorize the Chairman to appoint Deputy Vice Chairmen, and to provide that they perform such functions as the Chairman may specify and serve at his or her pleasure.

Subsection (c) would rescind the Chairman's authority in current section 7101(c)(1) to designate temporary Board members, would relocate there the Chairman's authority in current section 7102(a)(2)(A)(ii) to designate acting Board members, and would remove the 90-day and 270-day limits in current sections 7102(a)(2)(A)(ii) and 7102(a)(2)(B) on the period acting Board members may serve. It also would remove references in current section 7101(c)(3) to temporary Board members.

Subsection (d) would require the Chairman to report yearly who served as acting Board members during the preceding fiscal year and how many cases they participated in.

Subsection (e) would correct a reference in current section 7101(d)(3)(B) to a nonexistent section and remove a reference in current section 7101(e) to temporary Board members.

Section 12303 would amend current section 7102 by allowing the Chairman, in lieu of the current scheme of dividing the Board into three-member sections, to determine any matter or motion before the Board or to assign any such matter or motion to any other individual Board member or panel of members for determination. It also would prohibit judicial review of any such assignment made by the Chairman. The provisions in current section 7102(b) concerning hearings would be relocated to proposed section 7110.

Section 12304 would make changes in the way determinations are made by the Board of Veterans' Appeals.

Subsection (a) would amend current section 7103(a) to include the Board's authority in current section 7105(d)(5) to dismiss appeals which allege no specific error of fact or law in the determination being appealed. It would also amend section 7103(a) to authorize the Board to dismiss appeals in which the determination being appealed has become moot, to remand cases in which Board members deem additional development necessary for proper disposition, and to render a written decision on issues not dismissed or remanded, which decision shall constitute the Board's final disposition of such issues. It also would relocate into proposed section 7103(a) various requirements in current section 7104: (1) that Board decisions be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation; (2) that the Board be bound in its decisions by the regulations of the Department, instructions of the Secretary, and precedent opinions of the chief legal officer of the Department; and (3) that each Board decision include a written statement of the Board's findings and conclusions, as well as the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record, and an order granting appropriate relief or denying relief.

Subsection (a) would also change references to Board sections in current section 7103(a) to Board panels and subject the provision concerning majority decisions of panels to the exception in proposed section 7103(b) of having the Chairman vote on reconsiderations to create a majority when a majority decision cannot otherwise be reached.

Subsection (b) would amend section 7103(b) to relocate there the provision in current section 7103(a) concerning the finality of Board decisions unless the Chairman orders reconsideration in a case. It

would also relocate into proposed section 7103(b) the provision in current section 7104(b) concerning the exception provided in section 5108 to the finality of a claim disallowed by the Board. Subsection (b) would also make administrative allowances under proposed section 7103(d) an exception to the finality of Board decisions. It also would amend section 7103(b) to clarify that, when the Chairman orders reconsideration in a case, the case shall be considered by a panel of Board members assigned by the Chairman but excluding the Chairman if originally decided by an individual Board member, or by an expanded panel of Board members assigned by the Chairman but excluding the Chairman if originally decided by a panel of members. It further would provide that, if the panel or expanded panel cannot reach a majority decision, the Chairman may again expand the panel or vote with the panel so as to create a majority decision.

Subsection (c) would amend current section 7103 by adding a new subsection (d), which would require any Board member who believes that a prior, otherwise final denial of a claim should be revised or amended to grant a benefit in whole or in part, based on a difference of opinion as to how the evidence should be evaluated rather than on any error in the prior decision, to refer such case to the Chairman or Vice Chairman for consideration. It also would require the Chairman or Vice Chairman, if of the same opinion in a case, whether upon referral by a Board member or on the Chairman's or Vice Chairman's own motion, to administratively allow the claim. Further, it would prohibit judicial review of the determination of the Chairman or Vice Chairman as to whether to exercise this authority. Subsection (c) would also relocate into a new section 7103(e) the provisions in current section 7104(e), concerning the notification that a Board decision has been made, as well as making technical changes to the language.

Section 12305 would amend current section 7104 (a) to correct the citation to former section 211(a). It would also eliminate provisions in current section 7104 (a) , concerning the opportunity for a hearing and the bases of Board decisions, which would be relocated to other sections by sections 12308 and 12304 of the draft bill, respectively, and eliminate current sections 7104(b) through (e), the provisions of which would be relocated by section 12304 of the draft bill.

Section 12306 eliminates current section 7105(d) (5), the provisions of which would be included in proposed section 7103 (a) (1) by section 12304 (a).

Section 12307 would amend section 7109 to specifically authorize Board members to request opinions on medical questions from Board employees, Veterans Health Administration employees, or employees of other Federal departments or agencies, provided such employees are licensed to practice medicine in any state. It also would combine into one subsection, proposed section 7109(b), the provisions in current sections 7109(a) and (b) and specify that employees of a medical school, university, or clinic shall not be considered, for purposes of this section, employees of VA or another Federal department or agency just because the medical school, university, or clinic receives grants from, or provides contract services to, VA or another Federal department or agency. Further, section

12307 would amend current section 7109(c) to require that the opinion be in writing and made a part of the record, and that the claimant be given the opportunity to respond. It also would change the reference to furnishing a copy of the opinion to the claimant to mailing a copy of the opinion to the claimant and any representative.

Section 12308 would amend current section 7110 to include the requirement in current section 7104(a) that the Board decide an appeal only after affording the claimant the opportunity for a hearing and change the reference to the claimant to the appellant. It also would include in proposed section 7110(b) the requirements in current section 7102(b) that a hearing docket be maintained and formal recorded hearings be held by a Board member or members designated by the Chairman. Such member or members will participate in making the final determination in the claim. Technical changes to comport with other provisions in the draft bill are also included. It would also delete the reference in current section 7110 to a traveling section of the Board and specify that appellants may request a hearing before the Board at either its principal location or a VA regional office, as well as authorizing VA to specify where hearing requests may be filed. In addition, section 12308 would authorize the Secretary to provide suitable facilities and equipment to enable appellants at a facility within a regional office area to participate, via voice or picture-and-voice transmission by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location. Further, where such facilities are available, it would give the Chairman discretion to offer such a hearing to an appellant in lieu of a personal appearance before the Board in the regional office area or at the Board's principal location.

Section 12309 would amend the table of contents at the beginning of chapter 71, title 38, United States Code, to conform to new section headings for proposed sections 7102, 7109, and 7110.

Section 12310 would amend current section 5110 to add a new subsection (o), which would provide that the effective date for the award of any benefit or any increase in any benefit on the basis of a difference of opinion as authorized in proposed section 7103(d) be no earlier than the date VA received an application under 38 U.S.C. § 5108 to reopen the claim if the award resulted from review initiated by such an application, or the date the Chairman or Vice Chairman approved the award if it resulted from review undertaken solely on VA's own initiative.

* * * * *

DEPARTMENT OF VETERANS AFFAIRS,
SECRETARY OF VETERANS AFFAIRS,
Washington, DC, August 13, 1993.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

Dear Mr. Speaker: Transmitted herewith is a draft bill, entitled the "Veterans' Appeals Improvement Act of 1993," to amend title 38, United States Code, to improve and clarify certain adjudication and appeal procedures relating to claims for benefits under the

laws administered by the Department of Veterans Affairs (VA or Department). I request that this bill be referred to the appropriate committee for prompt consideration and enactment.

The improvements proposed in this bill are urgently needed to reverse the trends of decreasing productivity and increasing response time of the Board of Veterans' Appeals (BVA or Board). The growing demand for personal hearings, changes made by the Veterans' Judicial Review Act of 1988, and the evolving body of case law generated by the United States Court of Veterans Appeals (CVA or Court) have all contributed to the increased delays appellants are experiencing. The number of BVA decisions issued declined from 45,308 in FY 1991 to 33,483 in FY 1992, and is projected to drop further to 27,600 in FY 1993. (The number of appeals received by the BVA has also decreased, but only from 43,903 in FY 1991 to 38,229 in FY 1992, and is expected to rise to 39,000 in FY 1993.) More dramatic has been the increase in response time, the projected number of days it would take the BVA to decide all currently pending appeals, based on the average number of decisions rendered per day over the preceding year. Response time increased from 139 days in FY 1991 to 240 days in FY 1992, and is expected to soar to 441 days in FY 1993. Current BVA procedures must be revised to permit the Board to improve its productivity and timeliness. It is estimated that allowing individual Board members to sign decisions (as proposed in the bill), alone, would raise the number of decisions issued in FY 1994 from 29,185 to 36,550, an increase of 25.2 percent.

This bill would authorize several changes in the procedures used by the BVA to adjudicate appeals from denials of veterans' benefits within VA. The changes would include allowing individual BVA members, instead of sections of three members, to rule on matters before the BVA; allowing the BVA Chairman or Vice Chairman to administratively allow, on the basis of difference of opinion, previously denied claims; and allowing the BVA to use modern telecommunications technology to hold hearings with the BVA member or members presiding in Washington, DC, and the claimant appearing at a remote location. The draft bill would also clarify the BVA's authority to obtain and employ medical opinions from its own staff physicians, other VA physicians, and those of other Federal departments or agencies. The enclosed section-by-section analysis describes in more detail all the changes the draft bill would make. Most of these would give the Board more flexibility to meet its increasing work load and to improve the quality and timeliness of its decisions.

Probably the single most important change this proposed bill would make in current law is that in Section 3, to authorize the BVA Chairman to determine any matter before the BVA, or rule on any motion in connection therewith, or to assign any such matter or motion to any other BVA member or panel of members for determination. Current section 7102 of title 38 allows the Chairman to divide the BVA into sections of three members, to assign members to the sections, and to designate the chiefs of the sections, and requires that a BVA section make determinations in any proceeding instituted before the BVA and on any motion in connection therewith, assigned to the section by the Chairman. The proposed

change would allow the BVA to use its resources more efficiently in two ways. First, it would permit individual BVA members to decide appeals and rule on motions and fee agreements. Instead of three BVA members reviewing the same case, each member could review and decide a different case. With review of BVA decisions by the CVA now available, having three BVA members review a case is not so critical to an assurance of good, fair decisions as it once was. Second, it would permit the Chairman to rule on procedural motions and other matters not requiring extensive familiarity with all the evidence in a case, thereby freeing the other members to review and decide cases on the merits.

The proposed bill would give the BVA the flexibility to use its resources more effectively in other ways. In addition to allowing individual-member decisions and a streamlined motion-ruling procedure, the proposed bill, at Section 2(a), would remove the 67-member limit on the BVA now in section 7101(a) of title 38. Removing the limit would give the Department more flexibility in meeting the BVA's increasing work load and complying with the Congressional mandate in current section 7101(a) of title 38 "to conduct hearings and consider and dispose of appeals . . . in a timely manner." In addition to increasing the number of matters pending before the BVA, judicial review has presented the challenge of an ever-evolving body of case law to be applied in the course of BVA's deliberations. Because decisional quality remains our top priority, Section 2(a) would also statutorily recognize the position of Deputy Vice Chairman, which was administratively created in 1980 to help control the quality of BVA decisions. No significant cost or saving is currently anticipated in connection with these changes.

Our bill would also authorize the BVA Chairman or Vice Chairman, either upon the recommendation of another BVA member or upon his or her own motion, to allow, on the basis of difference of opinion, a claim previously denied and otherwise final. The purpose of this provision is to allow the Chairman and Vice Chairman to temper harsh results in reviewing legally correct, albeit "close," prior decisions. It would re-establish an authority previously exercised by the BVA Chairman and Vice Chairman under regulation, which the VA General Counsel determined was inconsistent with current law. Although not directly affecting the timeliness or quality of BVA decisions, this provision of the bill would result in more allowed claims. Another provision of the draft bill, Section 10, would establish the traditional regulatory effective dates for awards administratively allowed, generally the date of application to reopen the claim, but for cases in which VA undertook review solely on its own initiative, the date the claim was administratively allowed (since no application to reopen the claim would have been received). Estimating 50 additional allowances under the provision for administrative allowance each year, based on 65 administrative allowances during FY 1989, the last full year the old procedure was in effect (the total number of cases the BVA decides in a year is now lower), the costs would be:

<i>Fiscal year</i>	<i>Costs</i>
1994	\$250,433
1995	259,449
1996	269,049
1997	278,734
1998	288,769
Total	1,346,434

The number of requests for hearings before the BVA, especially in the field, has increased since passage of the Veterans' Judicial Review Act of 1988. In FY 1991, the BVA held 1,108 hearings in Washington, DC, and 880 hearings in VA regional offices; in FY 1992, the BVA held 1,394 hearings in Washington and 1,258 in regional offices. Section 8 of the draft bill, besides bringing together in one section hearing provisions currently in various sections of title 38, would authorize the BVA Chairman, when suitable facilities and equipment are available, to offer an appellant the opportunity to appear at a remote facility and participate, through voice or picture-and-voice transmission by electronic or other means, in a hearing with the BVA member or members sitting in Washington, DC. The authority to hold telecommunicated hearings would provide an alternative to sending a BVA member to a field facility when such a trip would not be cost-effective or time-effective. Section 8 also allows VA to specify where field hearing requests must be filed, which would help the BVA to better maintain a docket that satisfies the provision of current section 7110 that hearings be scheduled in the order the requests were received.

Section 7 of the draft bill would make explicit the authority of the BVA to obtain medical opinions from its own staff physician-advisers, from physicians of the Veterans Health Administration within VA, or from physicians of other Federal departments or agencies. This would be in addition to its current authority, in section 7109 of title 38, to obtain advisory medical opinions from independent medical experts not employed by VA.

These changes would help the BVA to meet one of the evidentiary requirements articulated by the CVA, to consider only independent medical evidence to support its findings and not to rely on the unsubstantiated opinion of its own deciding members. *Colvin v. Derwinski*, 1 Vet. App. 171 (1991). An increased demand for medical opinions is expected because of this CVA-imposed requirement. Using in-house BVA staff physicians as medical experts would save time, and the BVA would also be able to take advantage of nationally recognized expertise within VA and other Federal departments or agencies as needed. To satisfy due-process concerns, the proposal would require that medical opinions be in writing and that the appellant have an opportunity to respond. No additional VA staff are required, and no cost or saving is anticipated from these changes.

Section 2(c) of the proposed bill would repeal the Chairman's authority, in current section 7101(c)(1) of title 38, to designate temporary BVA members and would remove the limits, in current sections 7102(a)(2)(A)(ii) and 7102(a)(2)(B), on the length of time an acting member may serve. Section 2(d) would require the BVA Chairman to report each year who served as acting Board members during the preceding fiscal year and how many cases they participated in. No Chairman has ever used the authority to designate a temporary member. Removing limits on how long an acting member may serve is important to keeping the same member associated with a case until final disposition. The BVA has had acting mem-

bers hold a hearing, request a medical opinion, or otherwise participate in the evidentiary development of a case only to have their period as acting members expire by the time a decision was ready to be made. Also, the administrative burden of staying within the 90 and 270-day limits is considerable. The proposed change would allow acting members to follow through with a case to completion and relieve the BVA of that administrative burden. On the other hand, Congress would be able to monitor the Chairman's use of acting Board members and to redress any abuse of that authority by the Chairman. No cost or saving is associated with these proposed changes.

Enactment of this draft bill would result in estimated additional costs, all associated with the administrative-allowance provision, of \$250,433 for fiscal year 1994 and \$1,346,434 for the five-year period of fiscal years 1994 through 1998. Because it would increase direct spending, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to submission of this legislative proposal to the Congress.

Sincerely,

JESSE BROWN,
Secretary.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 3—DEPARTMENT OF VETERANS AFFAIRS

* * * * *

§ 305. Under Secretary for Health

(a)(1) * * *

(2) The Under Secretary for Health [shall be a doctor of medicine and shall be] *shall (except as provided in subsection (d)(1)) be a doctor of medicine. The Under Secretary shall be appointed without regard to political affiliation or activity and solely—*

(A) * * *

* * * * *

(d)(1) Whenever a vacancy in the position of Under Secretary for Health occurs or is anticipated, the Secretary shall establish a commission to recommend individuals to the President for appointment

to the position. *If at the time such a commission is established both the position of Deputy Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed by the President as Under Secretary for Health may be someone who is not a doctor of medicine. In any case, the Secretary shall develop, and shall furnish to the commission, specific criteria which the commission shall use in evaluating individuals for recommendations under paragraph (3).*

* * * * *

(3) A commission established under this subsection shall recommend at least three individuals for appointment to the position of Under Secretary for Health. *In a case in which, pursuant to paragraph (1), the individual to be appointed as Under Secretary does not have to be a doctor of medicine, the commission may make recommendations without regard to the requirement in subsection (a)(2)(A) that the Under Secretary be appointed on the basis of demonstrated ability in the medical profession, but in such a case the commission shall accord a priority to the selection of a doctor of medicine over an individual who is not a doctor of medicine.*

(4) The commission shall submit all recommendations to the Secretary. The Secretary shall forward the recommendations to the President with any comments the Secretary considers appropriate. Thereafter, the President may request the commission to recommend additional individuals for appointment.

[(4)] (5) The Assistant Secretary or Deputy Assistant Secretary of Veterans Affairs who performs personnel management and labor relations functions shall serve as the executive secretary of a commission established under this subsection.

* * * * *

§ 312. Inspector General

(a) * * *

[(b)(1)] (1) The Secretary shall provide for not less than 40 full-time positions in the Office of Inspector General in addition to the number of such positions in that office on March 15, 1989.

[(2)] (2) The President shall include in the budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31 an estimate of the amount for the Office of Inspector General that is sufficient to provide for a number of full-time positions in that office that is not less than the number of full-time positions in that office on March 15, 1989, plus 40.

[(3)] (3) The Secretary shall provide the number of additional full-time positions in the Office of Inspector General required by paragraph (1) not later than September 30, 1991.]

(b) *Whenever the Secretary proposes to reduce the authorized number of full-time equivalent employees assigned to the Office of Inspector General, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report providing notice of the proposed reduction and a detailed explanation for the proposed reduction. No action to carry out the proposed reduction may be taken after the submission of such report until the end of a 45-day period of continuous session of Congress*

(determined in the same manner as specified in the last sentence of section 510(b) of this title) following the date of the submission of the report.

* * * * *

CHAPTER 5—AUTHORITY AND DUTIES OF THE SECRETARY

* * * * *

SUBCHAPTER I—GENERAL AUTHORITIES

* * * * *

§ 510. Authority to reorganize offices

(a) * * *

(b) The Secretary may not in any fiscal year implement an administrative reorganization described in subsection (c) unless the Secretary first submits to the appropriate committees of the Congress a report containing a detailed plan and justification for the administrative reorganization. No action to carry out such reorganization may be taken after the submission of such report until the end of a [90-day] 45-day period of continuous session of Congress following the date of the submission of the report. For purposes of the preceding sentence, continuity of a session of Congress is broken only by adjournment sine die, and there shall be excluded from the computation of such [90-day] 45-day period any day during which either House of Congress is not in session during an adjournment of more than three days to a day certain.

* * * * *

[(d)(1) Not less than 30 days before the date on which the implementation of any administrative reorganization described in paragraph (2) of a unit in the Central Office is to begin, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a notification regarding the reorganization.]

[(2) Paragraph (1) applies to an administrative reorganization of any unit of the Central Office that is the duty station for 30 or more employees if the reorganization involves a reduction in any fiscal year in the number of full-time equivalent employees with permanent duty station in such unit by 50 percent or more.]

(d)(1) The limitation in subsection (b) does not apply with respect to an administrative reorganization at a medical facility if the Secretary determines that the reorganization is necessary to respond to an emergency situation at that facility. The Secretary may determine that there is an emergency situation at a medical facility for purposes of this subsection only in a case in which there would be an immediate danger to patients and employees at that facility without the reorganization. In the case of a facility at which officials of the Department are considering whether to implement an administrative reorganization before the event or occurrence which leads to an initial finding that such an emergency exists, the Secretary may not make such a determination.

(2) *Whenever the Secretary determines under paragraph (1) that it is necessary to carry out an administrative reorganization at a medical facility without regard to the limitation in subsection (b), the Secretary shall submit a report on that determination to the Committees on Veterans' Affairs of the Senate and House of Representatives. The report shall provide the same information as is provided in a detailed plan and justification in the case of an administrative reorganization subject to subsection (b). The Secretary shall include in the report an explanation of the alternatives to the proposed administrative reorganization that were considered and each factor that was considered in the decision to reject each such alternative.*

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PART II—GENERAL BENEFITS

* * * * *

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

§ 1506. Resource reports and overpayment adjustments

As a condition of granting or continuing pension under section 1521, 1541, or 1542 of this title, the Secretary—

(1) * * *

(2) [shall] *may* require that any such applicant or recipient file each year with the Department (on such form as may be prescribed for such purpose by the Secretary) a report showing—

(A) * * *

* * * * *

(3) shall require that any such applicant or recipient promptly [file a revised report] *notify the Secretary* whenever there is a material change in the estimated annual income of such applicant or recipient (or of any such spouse or dependent child) or a material change in such applicant's or recipient's estimate of the value of the corpus of the estate of such applicant or recipient (or of any such spouse or dependent child), and in the case of a surviving child, a material change in the estimated annual income or value of the corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support; and

* * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

* * * * *

**SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING
TO HOSPITAL AND NURSING HOME CARE AND MEDICAL
TREATMENT OF VETERANS**

* * * * *

**§ 1729. Recovery by the United States of the cost of certain
care and services**

(a) * * *

* * * * *

(g)(1) * * *

* * * * *

(3) Sums in the Fund shall be available to the Secretary for the following:

(A) * * *

* * * * *

(C) Payments for (i) the purchase of needed medical equipment, and (ii) such other purposes as may be specifically authorized by law.

[(4) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3).]

(4)(A) Not later than December 1 of each year, there shall be set aside within the Fund a reserve to be used for the purposes described in paragraph (3)(C). The amount placed into the reserve each year shall be determined under subparagraph (B). No funds may be obligated under paragraph (3)(C) in excess of the funds in the reserve. The reserve shall remain available for obligation until expended.

(B)(i) On December 1, 1993, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1993, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

(II) \$538,600,000.

(ii) On December 1, 1994, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1994, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

(II) \$590,500,000.

(iii) On December 1, 1995, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1995, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

(II) \$646,000,000.

(iv) On December 1, 1996, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1996, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

(II) \$698,100,000.

(v) On December 1, 1997, the amount set aside for the reserve under subparagraph (A) shall be the amount by which—

(I) the unobligated balance remaining in the Fund at the close of business on September 30, 1997, minus any part of such balance that the Secretary determines is necessary to defray, the expenses, payments, and costs described in paragraph (3), exceeds

(II) \$753,500,000.

(C) If the amount to be set aside for the reserve for any year, as calculated under subparagraph (B), is less than zero, the amount added to the reserve for that year shall be zero.

(5) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3), and the amount in the reserve described in paragraph (4).

(6) The Secretary shall prescribe regulations for the allocation of amounts in the reserve under paragraph (4) to the medical centers of the Department for the purposes stated in paragraph (3)(C). Those regulations shall be designed to provide incentives to directors of medical centers to increase the recoveries and collections under this section by requiring that 20 percent of those amounts be made available each year directly to the medical centers at which such recoveries and collections have been at above average levels. The remaining 80 percent of those funds shall be allocated as the Secretary considers appropriate.

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PART V—BOARDS, ADMINISTRATIONS, AND SERVICES

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CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.

7101. Composition of Board of Veterans' Appeals.

[7102. Assignment of members of Board.

7103. Determinations by the Board.]

7102. *Decisions by the Board.*

7103. *Reconsideration; correction of obvious errors.*

* * * * *

[7110. Traveling sections.]

7110. *Hearings.*

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§ 7101. Composition of Board of Veterans' Appeals

[(a) There is in the Department a Board of Veterans' Appeals (hereafter in this chapter referred to as the "Board"). The Board is under the administrative control and supervision of a chairman directly responsible to the Secretary. The Board shall consist of a Chairman, a Vice Chairman, and such number (not more than 65) of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.]

(a)(1) There is in the Department a Board of Veterans' Appeals (hereinafter in this chapter referred to as the 'Board'). The Board is under the administrative control and supervision of a Chairman directly responsible to the Secretary.

(2) The members of the Board shall be the Chairman, a Vice Chairman, such number of Deputy Vice Chairmen as the Chairman may designate under subsection (b)(4), and such number of other members as may be found necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary to conduct hearings and consider and dispose of matters properly before the Board in a timely manner.

(b)(1) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of six years. The Chairman shall be subject to the same ethical and legal limitations and restrictions concerning involvement in partisan political activities as apply to judges of the United States Court of Veterans Appeals. The Chairman may be removed by the President for misconduct, inefficiency, neglect of duty, or engaging in the practice of law or for physical or mental disability which, in the opinion of the President, prevents the proper execution of the Chairman's duties. The Chairman may not be removed from office by the President on any other grounds. Any such removal may only be made after notice and opportunity for hearing.

(2)(A) The [other members of the Board (including the Vice Chairman)] Board members other than the Chairman shall be ap-

pointed by the Secretary, with the approval of the President, based upon recommendations of the Chairman. Each such member shall be appointed for a term of nine years.

(B) A member of the Board (other than the Chairman) may be removed by the Secretary upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this [paragraph] *subparagraph* shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section 554(a)(2) of title 5 shall not apply to a removal action under this subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title.

(3) Members (including the Chairman) may be appointed under this subsection to more than one term.

[(4) The Secretary shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the Secretary.]

(4) The Secretary shall designate one Board member as Vice Chairman based upon recommendations of the Chairman. The Chairman may designate one or more Board members as Deputy Vice Chairmen. The Vice Chairman and any Deputy Vice Chairman shall perform such functions as the Chairman may specify. The Vice Chairman shall serve as Vice Chairman at the pleasure of the Secretary. Any Deputy Vice Chairman shall serve as Deputy Vice Chairman at the pleasure of the Chairman.

(c)[(1) Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the Department to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month period.] *(1) The Chairman may from time to time designate one or more employees of the Department to serve as acting Board members.*

[(2) Designation under paragraph (1) of this subsection of an individual as a temporary member of the Board may not be made when there are fewer than 65 members of the Board.

[(3)] (2) In each annual report to the Congress under section 529 of this title, the Secretary shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the Secretary shall indicate, in terms of full-time employee equivalents, the number of [temporary Board members designated under this subsection and the number of] acting Board members designated under [section 7102(a)(2)(A)(ii) of this title] *paragraph (1)* during the year for which the report is made.

(d)(1) * * *

(2) Each such report shall include, with respect to the preceding fiscal year, information specifying—

(A) * * *

* * * * *

(D) the average length of time a case was before the Board between the time of the filing of an appeal and the disposition during the preceding fiscal year; [and]

(E) the number of members of the Board at the end of the year and the number of professional, administrative, clerical, stenographic, and other personnel employed by the Board at the end of the preceding fiscal year[.]; and

(F) *the names of those employees of the Department designated under subsection (c)(1) to serve as acting Board members during that year and the number of cases each such acting Board member participated in during that year.*

(3) The projections in each such report for the current fiscal year and for the next fiscal year shall include (for each such year)—

(A) an estimate of the number of cases to be appealed to the Board; and

(B) an evaluation of the ability of the Board (based on existing and projected personnel levels) to ensure timely disposition of such appeals as required by [section 7103(d)] *section 7101(a)(2)* of this title.

(e) A performance incentive that is authorized by law for officers and employees of the Federal Government may be awarded to a member of the Board (including [a temporary or] *an* acting member) by reason of the member's service on the Board only if the Chairman of the Board determines that such member should be awarded that incentive. A determination by the Chairman for such purpose shall be made taking into consideration the quality of performance of the Board member.

[§ 7102. Assignment of members of Board

[(a)(1) The Chairman may from time to time divide the Board into sections of three members, assign the members of the Board thereto, and designate the chief thereof.

[(2)(A) If a section is composed of fewer than three members as a result of the absence of a member or a vacancy on the Board or the inability of a member assigned to a section to serve on that section, the Chairman—

[(i) may assign another member of the Board to the section;

[(ii) may designate an employee of the Department to serve as an acting member of the Board on such section for a period of not to exceed 90 days, as determined by the Chairman; or

[(iii) may direct the section to proceed with the transaction of business without awaiting the assignment of an additional member to the section.

[(B) An individual may not serve as an acting member of the Board for more than 270 days during any 12-month period.

[(3) A section of the Board may not at any time have among its members more than one individual who is a temporary member designated under section 7101(c) of this title or an acting member designated under paragraph (2)(A)(ii) of this subsection.

[(b) A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members as the Chairman may designate, the associate member or members being of the section which will make final determination in the claim.

[(c) A section of the Board shall make a determination on any proceeding instituted before the Board and on any motion in connection therewith assigned to such section by the Chairman and shall make a report of any such determination, which report shall constitute its final disposition of the proceeding.]

[§ 7103. Determinations by the Board]

[(a) Decisions by a section of the Board shall be made by a majority of the members of the section. The decision of the section is final unless the Chairman orders reconsideration of the case.]

[(b) If the Chairman orders reconsideration in a case, the case shall upon reconsideration be heard by an expanded section of the Board. When a case is heard by an expanded section of the Board after such a motion for reconsideration, the decision of a majority of the members of the expanded section shall constitute the final decision of the Board.]

[(c) Notwithstanding subsections (a) and (b) of this section, the Board on its own motion may correct an obvious error in the record.]

§ 7102. Decisions by the Board

A proceeding instituted before the Board shall be assigned to an individual member or a panel of members of the Board (other than the Chairman). A member or panel of members who are assigned a proceeding shall render a decision thereon, including any motion filed in connection therewith. The member or panel of members shall make a report under section 7104(d) of this title on any such determination, which report shall constitute the Board's final disposition of the proceeding. Decisions by a panel shall be made by a majority of the members of the panel.

§ 7103. Reconsideration; correction of obvious errors

(a) The decision of a member or panel of the Board under section 7102 of this title is final unless the Chairman orders reconsideration of the case. Such an order may be made on the Chairman's initiative or upon motion of the claimant.

(b)(1) If the Chairman orders reconsideration in a case decided by a single member, the matter shall be referred to a panel of not less than three Board members, not including the member who rendered the initial decision, which shall render its decision after reviewing the entire record before the Board. Such decisions shall be made by a majority vote of the members of the panel and shall constitute the final decision of the Board.

(2) If the Chairman orders reconsideration in a case decided by a panel of members, the matter shall be referred to an enlarged panel, not including the members of the panel which rendered the initial decision, which shall render its decision after reviewing the entire record before the Board. Such decisions shall be made by a majority vote of the members of the expanded panel and shall constitute the final decision of the Board.

(c) The Board on its own motion may correct an obvious error in the record, without regard to whether there has been a motion or order for reconsideration.

§ 7104. Jurisdiction of the Board

(a) All questions in a matter which under section [211(a)] 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

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[§ 7110. Traveling sections

[A claimant may request a hearing before a traveling section of the Board. Any such hearing shall be scheduled for hearing before such a section within the area served by a regional office of the Department in the order in which the requests for hearing are received by the Department with respect to hearings in that area.]

§ 7110. Hearings

(a) *The Board shall decide any appeal only after affording the appellant an opportunity for a hearing.*

(b) *A hearing docket shall be maintained and formal recorded hearings shall be held by such member or members of the Board as the Chairman may designate. Such member or members designated by the Chairman to conduct the hearing will participate in making the final determination in the claim.*

(c)(1) *An appellant may request a hearing before the Board at either its principal location or at a regional office of the Department. A hearing held at a regional office shall (except as provided in paragraph (2)) be scheduled for hearing in the order in which the requests for hearing in that area are received by the Department at the place specified by the Department for the filing of requests for those hearings.*

(2) *In a case in which the Secretary is aware that the appellant is seriously ill or is under severe financial hardship, a hearing may be scheduled at a time earlier than would be provided under paragraph (1).*

(d) *At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission, or picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location. When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or members as provided in subsection (c). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of*

the appellant to a hearing as provided in subsection (c) shall not be affected.

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CHAPTER 73—VETERANS HEALTH ADMINISTRATION— ORGANIZATION AND FUNCTIONS

SUBCHAPTER I—ORGANIZATION

- Sec.
7301. Functions of Veterans Health Administration: in general.
7302. Functions of Veterans Health Administration: health-care personnel education and training programs.
7303. Functions of Veterans Health Administration: research programs.
7304. Regulations.
[7305. Divisions of Veterans Health Administration.]

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SUBCHAPTER I—ORGANIZATION

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[§ 7305. Divisions of Veterans Health Administration

[The Veterans Health Administration shall include the following:

[(1) The Office of the Under Secretary for Health.

[(2) A Medical Service.

[(3) A Dental Service.

[(4) A Podiatric Service.

[(5) An Optometric Service.

[(6) A Nursing Service.

[(7) Such other professional and auxiliary services as the Secretary may find to be necessary to carry out the functions of the Administration.]

§ 7306. Office of the Under Secretary for Health

(a) The Office of the Under Secretary for Health shall consist of [the following:] *such personnel as may be considered necessary for the purposes of this chapter. In appointing persons to positions in the Office, the Under Secretary shall consider the different types of health care services provided to veterans by the Veterans Health Administration and shall seek to ensure that appointments in the Office are made in such a manner that the Office is staffed so as to provide the Under Secretary with appropriate expertise in those services. The Office shall include the following:*

(1) The Deputy Chief Medical Director, who shall be the principal assistant of the Under Secretary for Health and who shall (*except as provided in subsection (c)*) be a qualified doctor of medicine.

(2) The Associate Deputy Chief Medical Director, who shall be an assistant to the Under Secretary for Health and the Deputy Chief Medical Director and who shall (*except as provided in subsection (c)*) be a qualified doctor of medicine.

[(3) Not to exceed eight Assistant Chief Medical Directors.

[(4) Such Medical Directors as may be appointed to suit the needs of the Department, who shall be either a qualified doctor

of medicine or a qualified doctor of dental surgery or dental medicine.

[(5) A Director of Nursing Service, who shall be a qualified registered nurse and who shall be responsible to the Under Secretary for Health for the operation of the Nursing Service.

[(6) A Director of Pharmacy Service, a Director of Dietetic Service, a Director of Podiatric Service, and a Director of Optometric Service, who shall be responsible to the Under Secretary for Health for the operation of their respective Services.

[(7) The Director of the National Center for Preventive Health, who shall be responsible to the Chief Medical Director for the operation of the Center.

[(8) Such directors of such other professional or auxiliary services as may be appointed to suit the needs of the Department, who shall be responsible to the Under Secretary for Health for the operation of their respective services.

[(8) Such other personnel as may be authorized by this chapter.

[(b) Of the Assistant Chief Medical Directors appointed under subsection (a)(3)—

[(1) not more than two may be persons qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines;

[(2) one shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Under Secretary for Health for the operation of the Dental Service; and

[(3) one shall be a qualified physician trained in, or having suitable extensive experience in, geriatrics who shall be responsible to the Under Secretary for Health for evaluating all research, educational, and clinical health-care programs carried out in the Administration in the field of geriatrics and who shall serve as the principal advisor to the Under Secretary for Health with respect to such programs.

[(c)] (b) Appointments under subsection (a) shall be made by the Secretary. [In the case of appointments under paragraphs (1), (2), (3), (4), and (7) of that subsection, such appointments] *Such appointments shall be made upon the recommendation of the Under Secretary for Health.*

(c)(1) If at the time of the appointment of the Deputy Under Secretary for Health under subsection (a)(1), both the position of Under Secretary for Health and the position of Associate Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Deputy Under Secretary for Health may be someone who is not a doctor of medicine.

(2) If at the time of the appointment of the Associate Deputy Under Secretary for Health under subsection (a)(2), both the position of Under Secretary for Health and the position of Deputy Under Secretary for Health are held by individuals who are doctors of medicine, the individual appointed as Associate Deputy Under Secretary for Health may be someone who is not a doctor of medicine.

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOS- PITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

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SUBCHAPTER I—ACQUISITION AND OPERATION OF MEDICAL FACILITIES

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§ 8110. Operation of medical facilities

(a)(1) The Secretary shall establish the total number of hospital beds and nursing home beds in medical facilities over which the Secretary has direct jurisdiction for the care and treatment of eligible veterans [at not more than 125,000 and not less than 100,000]. The Secretary shall establish the total number of such beds so as to maintain a contingency capacity to assist the Department of Defense in time of war or national emergency to care for the casualties of such war or national emergency. [Of the number of beds authorized pursuant to the preceding sentence, the Secretary shall operate and maintain a total of not less than 90,000 hospital beds and nursing home beds and shall maintain the availability of such additional beds and facilities in addition to the operating bed level as the Secretary considers necessary for such contingency purposes. The President shall include in the Budget transmitted to the Congress for each fiscal year pursuant to section 1105 of title 31, an amount for medical care and amounts for construction sufficient to enable the Department to operate and maintain a total of not less than 90,000 hospital and nursing home beds in accordance with this paragraph and to maintain the availability of the contingency capacity referred to in the second sentence of this paragraph.] The Secretary shall staff and maintain, in such a manner as to ensure the immediate acceptance and timely and complete care of patients, sufficient beds and other treatment capacities to accommodate, and provide such care to, eligible veterans applying for admission and found to be in need of hospital care or medical services.

* * * * *

§ 8111. Sharing of Department and Department of Defense health-care resources

(a) The Secretary and the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy may enter into agreements and contracts for the mutual use or exchange of use of hospital and domiciliary facilities, and such supplies, equipment, material, and other resources as may be needed to operate such facilities properly, except that the Secretary may not enter into an agreement that would [result (1) in a permanent reduction in the total number of authorized Department hospital beds and nursing

home beds to a level below the minimum number of such beds required by section 8110(a)(1) of this title to be authorized, or (2) in a permanent reduction in the total number of such beds operated and maintained to a level below the minimum number of such beds required by such section to be operated and maintained or] in any way subordinate or transfer the operation of the Department to any other agency of the Government.

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